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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

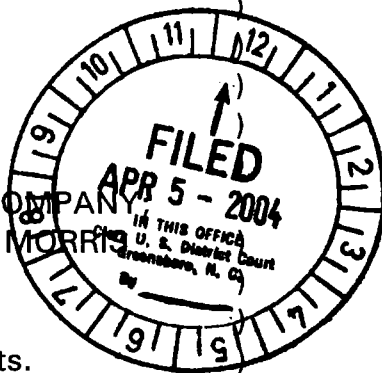
HAYWOOD M. CLAYTON and
SYLVIA K. CLAYTON,

Plaintiffs,

v.

AMERIQUEST MORTGAGE COMPANY,
LAWRENCE S. MARTIN; and MORRIS
SCHNEIDER & PRIOR, LLC,

Defendants.



1:02CV415

MEMORANDUM OPINION

TILLEY, Chief Judge

This matter is before the Court on Defendant Ameriquest Mortgage Company's Motion to Enforce the Settlement Agreement [Doc. #141]. For the reasons stated below, Ameriquest's Motion will be GRANTED.

I.

The facts and procedural history relevant to the pending matters are as follows. On May 28, 2002, Plaintiffs Haywood and Sylvia Clayton brought suit against Defendants¹ in the Middle District of North Carolina. On August 5, 2003, after numerous preliminary motions and discovery issues had been addressed, the

¹Of the three initial Defendants, only Ameriquest still remains in the case and is involved in the dispute at hand. Dismissal with prejudice was entered as to Defendants Lawrence S. Martin and Morris Schneider & Prior, LLC on October 28, 2003 [Doc. #147].

matter was set for trial. On September 23, 2003, the Claytons and Ameriquest participated in a pre-trial settlement conference with United States District Judge James A. Beaty, Jr. The parties stated they had reached a settlement agreement and announced the terms of that agreement in open court. The terms were approved and entered on the record. Relevant portions of the transcript [Doc. #149] are as follows.

MR. GAFFREAU:² I'm pleased to report we have reached a settlement agreement with the Plaintiffs in this matter and a number of other matters; and if I may, Your Honor, I'd like to go over the terms. . . .

[T]he parties are agreeing to mutual releases of all claims known or unknown wherever they may have been stated or are stated from the beginning of time until the present. . . .

The parties would agree to dismissals with prejudice to all claims that are pending against one another in this action, in the actions that are pending in state court, in bankruptcy court, at the Fourth Circuit, and other actions in the Middle District of North Carolina

THE COURT: That includes any motions for sanctions or motions for attorney's fees that may be outstanding; is that correct?

MR. GAFFREAU: Yes, Your Honor, and any orders or judgments that have already been issued granting relief to Ameriquest or to the Claytons in that regard. Those would be waived by both [parties]. . . .

²Mr. Stuart C. Gauffreau is counsel for Ameriquest.

[T]he parties are agreeing to convey title to . . . a piece of property that is adjacent to the house and the lot that are the subject of this action and that have been foreclosed upon; and they've represented that the lot is free of liens, judgments, and any other encumbrances. . .

[T]he Plaintiffs have agreed to indemnify Ameriquest for any expenses they may incur . . . if it turns out that any of those representations turn out not to be true. . . .

They've also represented there are no taxes due and owing with regard to that property. . . .

There's no admission of liability on the part of Ameriquest or on the part of the Plaintiffs. . . .

THE COURT: The parties are aware . . . that you're indicating as a part of this settlement any claims that are pending in state court will be disposed of and you'll be asking the court to accept the consent judgment reached in this case as evidence of the binding effect of the agreement . . . in state court. Is that correct?

MR. GAUFFREAU: That's correct, Your Honor.

MR. CLAYTON: That's correct, Your Honor.

THE COURT: Mr. Clayton, Mrs. Clayton, Mr. Gauffreau has laid out the terms of the settlement agreement. . . . Are you recommending to the Court that the Court accept this as the consent judgment in this case resolving all matters in this court and any other courts of other jurisdictions?

MR. CLAYTON: Yes, Your Honor.

MRS. CLAYTON: Yes, Your Honor.

THE COURT: You understand that by making that acknowledgment today the Court will sign off on the consent judgment once it's reached . . . and this today is the final resolution of the matter. The only thing awaiting is the Court's signature on the document that will be filed; but as far as the Court is concerned, this matter will be fully completed based upon the representations that have been made.

MR. CLAYTON: Happily so, Your Honor.

MRS. CLAYTON: Yes, sir.

(Tr. Settlement Conf. at 2-6.)³

In the week following the settlement conference, the parties were unable to agree on a written settlement agreement and consent judgment that accurately reflected the terms of the agreement as previously set forth on the record. On October 6, 2003, Plaintiffs filed a Motion to Transfer Pendant State Claims to State Court, and a "Notice of Voluntary Dismissal of all Federal Claims as it Relates to Defendant Ameriquest Mortgage Co." [Doc. #139]. In response, Ameriquest filed a Motion to Enforce the Settlement Agreement. [Doc. #141].

These motions were set for hearing on November 25, 2003. At this hearing, upon motion of the Plaintiffs, Judge Beaty recused himself and stated that the pending motions would be heard by another district judge.⁴ The matter was

³The transcript also lays out the terms upon which the Claytons were to vacate the foreclosed upon property. (*Id.* at 6.) As the Claytons have already vacated the property in question, these details are no longer relevant.

⁴The details of the *recusal* are irrelevant to the issues at hand.

referred to this Court and set for hearing on December 12, 2003. Ameritrust and Mr. Clayton were present at this hearing; Mrs. Clayton was absent. At the hearing, the parties were given further opportunity to continue settlement discussions. However, on December 29, 2003, Plaintiffs filed a Memorandum to the Court reporting the failure of the parties to agree and requesting further oral argument. [Doc. #152]. Ameritrust filed a response brief, again requesting that this Court enforce the September 23, 2003 settlement agreement.

II.

It is determined that further oral argument will not aid the decisional process. For the reasons discussed below, Ameritrust's Motion to Enforce the Settlement Agreement will be GRANTED. As a matter of policy, settlement benefits parties and conserves judicial resources, and is therefore favored by the Fourth Circuit. U.S. ex rel. McDermitt, Inc. v. Centex-Simpson Const., 34 F. Supp. 2d 397, 399 (N.D. W. Va. 1999). When a settlement is reached in a case pending before it, a trial court has the authority to enforce the terms of that settlement. The Fourth Circuit has stated that "[t]rial courts possess the inherent authority to enforce a settlement agreement and to enter judgment based on an agreement without a plenary hearing." Petty v. Timken Corp., 849 F.2d 130, 132 (4th Cir. 1988) (enforcing settlement agreement that was reached at a pre-trial conference, approved by the judge, and entered on the record).

A settlement agreement is a contract, and therefore exists once offer, acceptance, and consideration are exchanged between the parties, regardless of whether the agreement is oral or written. McDermitt, 34 F. Supp. 2d at 399. As such, the authority of a trial court to enforce a settlement agreement exists regardless of whether the settlement agreement has been reduced to writing. Id. Specifically, a settlement agreement whose terms are announced in open court and made part of the record, but is not otherwise reduced to writing is a valid contract enforceable by the court. Id. A motion to enforce a settlement agreement, in essence, is an action for specific enforcement of a contract. Id.

A review of the transcript of the September 23, 2003 hearing shows that the parties unequivocally agreed on the record that settlement had been reached. The terms of the settlement were clearly laid out and agreed to by each party. The fact that the terms were not discussed in great specificity did not bar the formation of a contract. As long as the terms enable the Court "to ascertain what the parties have agreed to do," the contract is enforceable. Id. at 400. Here, it is clear the parties agreed to release all claims and withdraw all motions, in any court, regarding this dispute.

Plaintiffs' arguments primarily focus on the terms of the draft settlement agreements and consent judgments that Ameriquest presented to them after the agreement was made on September 23, 2003. However, the contract was complete at the point when each party had agreed to the terms as stated for the

record on September 23, 2003. Therefore, this Court has the authority to enforce the terms of that oral agreement without reference to any later attempted efforts at reducing the agreement to writing.

III.

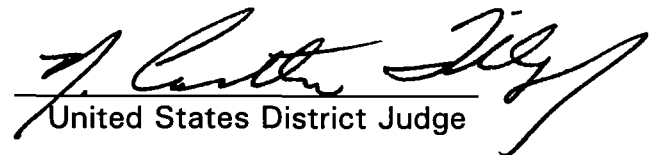
In summary, Ameriquest's Motion to Enforce the Settlement Agreement will be GRANTED. Accordingly, the parties will be ordered to take the following actions with respect to this dispute, both in this Court and others: (1) withdraw any and all motions for sanctions; (2) withdraw any and all motions for attorneys' fees; (3) withdraw any and all motions to vacate or amend orders; (4) file voluntary dismissals of any and all appeals filed in this dispute; (5) file notices of satisfaction of judgment as to any outstanding judgments; (6) file notices of waiver of any attorneys' fees that have already been awarded; and (7) file voluntary dismissals with prejudice as to all claims.⁵ Further, Plaintiffs will be ordered to execute a warranty deed to Ameriquest, in accordance with the representations made as part of the settlement agreement.⁶

⁵Plaintiffs' October 6, 2003 unilateral attempt to voluntarily dismiss its federal claims against Defendants [Doc. #139] was improper. All claims must be dismissed with prejudice.

⁶The Claytons agreed to convey title to the property in question. In addition, they agreed that, as of the date of the agreement, the lot was free of any encumbrances and that no taxes were due. Finally, they agreed to indemnify Ameriquest if these representations turned out to be false. (Tr. Settlement Conf. at 3-4.)

In addition, this Court's decision to grant the Motion to Enforce the Settlement Agreement renders the following pending motions MOOT: (1) Ameritrust's Motion for Summary Judgment [Doc. #85]; (2) Plaintiffs' Motion for Joinder of Claims and Remedies [Doc. #112]; and (3) Plaintiffs' Motion to Transfer Pendant State Claims to State Court [Doc. #139].

This 5th day of April, 2004


United States District Judge